

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.76 OF 2005

Sandeep Dinkar Kadam
and Ors.

...Petitioners

Vs.

Shankar Manohar Kulkarni & Ors....Respondents

.....
Mr.Vaibhav Sugdare for Mr.R.A.Thorat for Petitioners
Mr.Ranjane for Mr.G.S.Godbole for Respondent no.1
.....

CORAM : B.H.MARLAPALLE, J.

DATE : APRIL 6, 2005

P.C.:

1. Heard Mr.Vaibhav Sugdare holding for Mr.Thorat, the learned counsel for the Petitioners who are the defendants in R.C.S.No.230 of 1987. An application at Exh.188 came to be filed by the Plaintiff on or about 24.11.2004 stating that the sale deeds dated 16.3.1982 and 30.1.1984 were signed in respect of the suit properties when he was a minor and in the written statements filed by the defendants, they had claimed that the sale deeds were executed for legal necessity and for the benefit of minor Plaintiff and defendant no.5. The issues at Exh.35 were framed on 8.9.2004 on the basis of the said written statements. He therefore, prayed that the defendants nos.1 to 4

be called upon to lead evidence in respect of the issues nos. 7,10 and 11. The said defendants filed their say in response to the application at Exh.188 and opposed. However, the learned Civil Judge J.D. at Koregaon, has been pleased to allow the application vide order dated 22.12.2004 and hence this petition.

2. There is no dispute that the issues at Exh.35 have been framed by considering the averments made in the plaint as well as in the written statements. Issues nos. 3 to 6 appear to be the only issues which are required to be proved by the Plaintiff and so also the issues nos. 8 and 9. Remaining issues were required to be proved by the defendants. The sale transaction which is a subject matter of challenge, has been entered into by the Respondents nos.1 to 4 and that too when the Plaintiff was a minor. The view taken by the trial Court in these circumstances, is a possible view and it cannot be termed as perverse or patently erroneous. The learned counsel for the Petitioners referred to the provisions of Order XVIII Rule 3 of C.P.C. and submitted that it is the Plaintiff who must commence his evidence first. The trial Court has considered the provisions of Order XVIII Rule 3 of C.P.C. and has called upon the defendants to commence their evidence. In the facts of this case, the exception

made by the trial Court, does not call for any interference in a writ petition under Article 227 of the Constitution of India.

3. The petition is therefore, rejected summarily. Trial of the suit is expedited and it is directed that it may be decided preferably within a period of six months from the receipt of the writ of this Court.

4. Writ to go to the trial Court forthwith.

[B.H.MARLAPALLE, J.]